

Appl. No. 10/695,283
Docket No. 9086M
Amdt. dated March 17, 2009
Reply to Office Action mailed on December 23, 2008
Customer No. 27752

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REMARKS/ARGUMENTS

Formal Matters

Claims 1 and 6-9 remain under consideration. Claim 1 has been amended to recite the preferred upper glass transition temperature of 120°C. Basis is at page 9, line 12. Entry of the amendment is requested.

For the record, there are no objections or rejections under 35 USC 112 outstanding.

Rejections Under 35 USC 103

Claim 1 remains rejected under §103(a) over US 2003/0017125 in view of US5,866,110, and in further view of US 5,585,092, for reasons of record at pages 2-4 of the Office Action.

Claims 1 and 6-9 stand rejected over US 2002/0058015 in view of US 2003/0017125 and further in view of US5,866,110, and further in view of US 5,585,092 for reasons of record at pages 4-7 of the Office Action.

Applicants respectfully traverse all rejections, to the extent they may apply to the claims now under consideration.

Controlling Case Law

Previous arguments and citations to case law in support of patentability continue to apply, but will not be repeated herein, for the sake of brevity.

In reply to previous arguments, the Examiner has cited *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1989) for the proposition that optimization of a result-effective variable is ordinarily within the skill of one in the art. And, further, a result-effective variable is one that has well-known and expected results.

As will be seen from the discussion that follows, Applicants challenge the supposition on the part of the Examiner that the glass transition temperature of the polymer used for the perfume-containing particle of the invention would have any effect on the perfumery "top note" materials that are key to the present invention.

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Accordingly, the Examiner's attention is directed to MPEP 2144.05 (II) (B) for the proposition that a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. [Citing *In re Antonie*, 559 F.2d 618 (CCPA 1977).]

In further regard to the general proposition of "routine experimentation," quite interesting is a footnote in *In re Yates*, 663 F. 2d 1054; 211 USPQ 1149 at 1151 (CCPA 1981) chiding the solicitor:

The solicitor, relying upon *In re Aller*, 220 F. 2d 454, 105 USPQ 233 (1955), argues that it is 'not unobvious to discover optimum or workable ranges by routine experimentation.' In many instances this may be true. The problem, however, with such 'rules of patentability' (and the ever lengthening list of exceptions which they engender) is that they tend to becloud the ultimate legal issue – obviousness – and exact the formal exercise of squeezing new factual situations into pre-established pigeonholes. Additionally, the emphasis upon routine experimentation is contrary to the last sentence of §103. [emphasis supplied]

Regarding the present technology, as disclosed in the Specification at page 1, line 32 and page 2, line 8, the delivery of perfume "top note" materials to substrates is problematic. At page 13, lines 26-27, Applicants disclose that such "top notes" are materials having a Kovats Index of less than 1700 and preferably from about 1000 to about 1400 (page 8, line 29), as required by the claims now under consideration. Applicants solve this problem by means of the particles, as recited in Claim 1.

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With regard to the rejection over US 2003/0017125 in view of US5,866,110, the Examiner's attention is directed to the fact that the only glass transition temperature for the particles of US 2003/0017125 lies in the -100°C to about 15°C range; see [0050]. That range is far outside the glass transition temperature of the particles herein. Accordingly, it seems fair to say that, whatever the particles of US 2003/0017125 might be, they do not suggest the particles of the present invention.

And, again, the sole description of the benefit agent in the cited US 2003/0017125 document appears to be at [0053] – i.e., “perfumes”. Nothing in that uninformative term in any way suggests perfume ingredients having the herein-claimed Kovats Index, i.e., the “top note” materials that are key to the present invention.

Moreover, it is again respectfully submitted that the US5,866,110 patent does not cure the aforesaid deficiencies in the primary document. As previously noted, all US5,866,110 seems to be cited for is the use of sodium sulfate, which has now been removed as an element of the claim.

In regard to the now-cited '092 patent, it is noted that the patentees specifically teach that “... the resulting polymer does not exhibit a glass transition temperature (Tg) below about 140° ...” [emphasis supplied] Since this specifically excludes the temperature range herein, '092 cannot support a rejection under §103.

Net: Since the particles of the combination of cited documents are not those of the present invention as evidenced by the fact that nothing in the cited documents suggests particles having a glass transition temperature range as now claimed, and since the cited documents are silent as to the function of the perfume “top note” ingredients, it is submitted that no *prima facie* case of obviousness has been made. Reconsideration and withdrawal of the rejection on this basis are requested.

With regard to US 2002/0058015 in view of US 2003/0017125 and further in view of US 5,866,110, and further in view of US 5,585,092, the polymers of US 2002/0058015 appear to be quite different from those of the present invention, since they comprise a water-soluble polymer having water-insoluble particles of said polymer dispersed therein; see [0019]. Then, the active ingredient (which can be “fragrances”; see [0020]) is “dispersed in the polymeric composition by neutralization or chelation”.

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With respect, it is submitted that nothing in US 2002/0058015 fairly suggests the glass transition temperature aspect of the present invention, nor the viscosity aspect, nor the association between the particles and the perfume materials having the claimed Kovats Index.

Moreover, to combine US 2002/0058015 with US 2003/0017125 in the manner suggested by the Examiner would lead to particles having the -100 to 15°C glass transition temperature. And, the combination with US 5,866,110 adds nothing but the suggestion regarding sodium sulfate. Furthermore, the combination with US 5,585,092 would require a glass transition temperature above the herein-claimed 120°C.

Under the controlling case law (cited above) there is no reason in law or in logic to expect that such particles having such disparate Tg's would/could have the same beneficial effect on the top note perfume ingredients, in the manner of the present invention. Accordingly, it is submitted that nothing in the cited documents suggests the "experimentation" in the manner proposed by the Examiner.

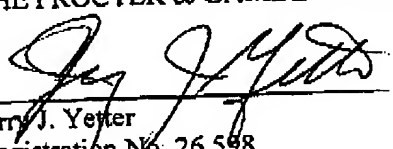
Net: It is submitted that the claims as now amended are not rendered *prima facie* obvious over these combinations of documents. Withdrawal of all rejections is requested.

In light of the foregoing, early and favorable action in the case is requested.

Respectfully submitted,

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